

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE AMANDA M. KNAPP
UNITED STATES MAGISTRATE JUDGE

**ARRAIGNMENT AND PLEA HEARING
HELD VIA VIDEOCONFERENCE**

APPEARANCES:

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Electronic recording transcribed by mechanical stenography from a digital audio recording; transcript produced by computer-aided transcription.

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1 | PROCEEDINGS

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7 Your Honor, the case before the court carries Case
8 Number 1:21-cr-805, United States of America versus Phillip
9 J. Augustin.

10 THE COURT: All right. Can I please have some
11 appearances of counsel?

12 MR. MORRISON: Yes. Good morning, Your Honor.

13 AUSA Elliot Morrison, joined by DOJ Fraud Section Attorney,
14 Trial Attorney Philip Trout and IRS-CI Special Agent Anthony
15 Pizzola on behalf of the United States.

16 THE COURT: Good morning.

17 UNIDENTIFIED SPEAKER: Good morning.

18 UNIDENTIFIED SPEAKER: Good morning.

19 MR. GRIECO: And, Judge, on behalf of
20 Mr. Augustin, this is Attorney Michael Grieco.

21 THE COURT: All right. And I can see we have
22 Mr. Augustin here as well.

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Mr. Augustin -- good morning.

25 THE DEFENDANT: Good morning.

1 THE COURT: Are you able to see and hear all of
2 the participants this morning, sir?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: All right, very good.

5 Mr. Morrison, are you and the other
6 representatives of the United States able to see and hear
7 everyone this morning?

8 MR. MORRISON: Yes, Your Honor.

9 THE COURT: Mr. Grieco, are you able to see and
10 hear all of our participants today?

11 MR. GRIECO: Yes, Your Honor. Thank you.

12 THE COURT: All right. Very good.

13 This proceeding is being conducted by
14 videoconference due to the national emergency caused by the
15 COVID-19 pandemic and pursuant to the authority of the CARES
16 Act and the standing orders of this court.

17 All attorneys are appearing by videoconference, as
18 well as Special Agent Pizzola, and the defendant is also
19 appearing by videoconference.

20 Mr. Augustin, can you tell me where you are
21 located today?

22 THE DEFENDANT: South Florida.

23 THE COURT: All right. Sir, is anyone physically
24 present in the room with you this morning?

25 THE DEFENDANT: No, Your Honor.

1 THE COURT: All right. And I realize that I had
2 called you Mr. Augustin. Is it Mr. Augustin?

3 THE DEFENDANT: It is Mr. Augustin.

4 THE COURT: Augustin, got it.

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: I will try -- I will try my best to --

7 THE DEFENDANT: You did right, that's fine.

8 THE COURT: All right, Mr. Augustin, very good.

9 All right. Mr. Augustin, you have a right to have
10 the court address you in person and in open court under Rule
11 (b) of the Federal Rules of Criminal Procedure for this
12 proceeding, but you can also consent to the use of
13 videoconferencing for this proceeding.

14 Mr. Grieco, have you had an opportunity to talk
15 with Mr. Augustin about -- did I get it right? See, I've
16 already forgotten, I'm sorry. Augustin?

17 THE DEFENDANT: That's fine. That's fine. That's
18 fine.

19 THE COURT: Okay. Okay. All right.

20 THE DEFENDANT: Don't worry.

21 THE COURT: I won't interrupt anymore with that.
22 All right.

23 Mr. Grieco, have you had an opportunity to talk
24 with Mr. Augustin about his right to appear in person and
25 his ability to consent to a proceeding by video?

1 MR. GRIECO: Yes, Your Honor.

2 THE COURT: All right. Mr. Augustin, did you have
3 a chance to talk to Mr. Grieco about those rights?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: All right. And I have here a waiver
6 of consent to video/teleconferencing, a waiver and consent
7 to video/teleconferencing at the change of plea hearing with
8 a signature overlying "Defendant" and the date December 14th
9 of 2021.

10 Did you sign this consent to proceed with this
11 proceeding by videoconference?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: All right. And did you have an
14 opportunity to ask Mr. Grieco any questions you had about
15 what it would mean to make that consent?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: And do you consent to appear by
18 video/teleconferencing today?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: All right. Mr. Grieco, do you consent
21 also to appear by video/teleconference and also stipulate
22 that given the particular facts pertaining to Mr. Augustin,
23 that this felony plea hearing cannot be further delayed
24 without serious harm to the interests of justice?

25 MR. GRIECO: Yes, Your Honor, so stipulated.

1 THE COURT: All right. Mr. Morrison, do you also
2 consent to appear today by videoconference and stipulate
3 that given the particular facts pertaining to Mr. Augustin,
4 this felony plea hearing cannot be further delayed without
5 serious harm to the interests of justice?

6 MR. MORRISON: Yes, Your Honor, we do, we do
7 consent and stipulate.

8 THE COURT: Thank you.

20 Is that correct?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: I further understand that there is a
23 plea agreement that forms the basis for this plea.

24 Is that correct?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: All right. As I indicated, this is an
2 arraignment and a plea hearing. The purpose of the hearing
3 is for me to determine whether you understand the many
4 rights that you will be giving up if you plead guilty in
5 this case.

6 And before I can accept your plea, I must make a
7 determination as to each of the following:

8 First, whether you consent to my taking your plea.

9 Second, whether you are competent to plead at this
10 time.

11 Third, whether you understand the constitutional
12 rights that will be waived if I recommend that your guilty
13 plea be accepted.

14 Further, whether you fully understand the nature
15 of the charges against you, including the maximum potential
16 penalties and any mandatory minimum penalties.

17 Whether there is a factual basis for your plea.

18 And finally, whether your plea is voluntary.

19 You should feel free to ask me questions at any
20 time during today's hearing. If you don't understand --
21 if you don't understand anything I have said, I will be
22 happy to offer further explanation.

23 Even though you have expressed an intent to plead
24 guilty, you have a right to change your mind at any time
25 before I accept your plea at the end of this proceeding.

1 All right. Mr. Morrison, is this a matter to
2 which the Crime Victims' Rights Act applies?

3 MR. MORRISON: No, Your Honor.

4 THE COURT: All right. Mr. Augustin, the first
5 matter we must address is your waiver of your right to have
6 this proceeding conducted before an Article III judge. An
7 Article III judge is a United States district judge, an
8 officer who is appointed under Article III of the United
9 States Constitution for a term of life.

10 I am not a district judge. I am a magistrate
11 judge, a judge who is appointed for an eight-year term
12 subject to reappointment.

13 Do you understand that I am not a district judge?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Have you discussed with Mr. Grieco
16 that you may consent to have me conduct these proceedings?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Did you conclude that it was in your
19 best interest to proceed before me even though I am not a
20 U.S. district judge?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: All right. I understand that you have
23 completed a consent to order of referral to the magistrate
24 judge for purposes of receiving your guilty plea.

25 In looking at that form on the second page, I can

1 see a signature over the line "Defendant." Did you sign
2 that consent form?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Before doing so, did you have an
5 opportunity to talk with Mr. Grieco about what the form
6 would mean and ask him any questions you had about what it
7 would mean to consent to have this conducted by a magistrate
8 judge?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: All right. Mr. Grieco, did you advise
11 Mr. Augustin in the preparation of the consent form?

12 MR. GRIECO: Yes, Your Honor.

13 THE COURT: All right. All right. Mr. Augustin,
14 this case is assigned to District Judge Barker. Do you
15 voluntarily and knowingly give up your right to plead before
16 Judge Barker or another Article III judge, and do you
17 voluntarily consent to appear before me for these
18 proceedings today?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Upon review of the consent form and
21 your answers to my questions here in court, I am going to
22 find your consent is knowing and voluntary.

23 Mr. Augustin, in a moment you will be placed under
24 oath and I will ask you some questions. An audio recording
25 is being made of my questions and your answers. It is not a

1 video recording. That means when you give your answers, you
2 need to keep your voice up. You need to give your answers
3 in words. Your shake of your head, your "uh-huh" or
4 "uh-uh," it will not be clearly captured on the record what
5 you mean.

6 Do you understand that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: All right. If you do not understand
9 any questions I ask, please let me know and I will be happy
10 to clarify.

11 If at any time you want to consult with your
12 attorney, please say so. You may do so at any time.

13 Do you understand these instructions?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Before we begin, I do want to remind
16 you that you have a right to remain silent under the United
17 States Constitution. You are not required to make any
18 statements today, but anything you say can be used against
19 you.

20 Before receiving your guilty plea, I will ask you
21 several questions that are to assure that your plea is
22 valid. By answering the questions, you will be making
23 statements against your interest and you will incriminate
24 yourself.

25 You will also be required to admit your guilt.

1 Do you understand that by proceeding here today
2 with a guilty plea, you will necessarily be giving up your
3 right to remain silent?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: All right. Would the clerk please
6 administer the witness oath?

7 THE CLERK: Mr. Augustin, if you'd please raise
8 your right hand.

9 (Defendant sworn.)

10 THE COURT: All right. Thank you, Mr. Augustin.

11 Now, do you understand you are now under oath to
12 tell the truth?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you understand that your answers to
15 my questions may be subject to the penalties for perjury if
16 you do not tell the truth?

17 THE DEFENDANT: Yes, I do, Your Honor.

18 THE COURT: All right. So the first thing we need
19 to talk about today is some questions to establish your
20 competence to understand today's proceedings and to enter a
21 knowing guilty plea. I am going to ask some background
22 questions for that purpose, the first of which is that I
23 would like you please to tell me your full name.

24 THE DEFENDANT: Phillip Joseph Augustin.

25 THE COURT: All right. And what is your age, sir?

1 THE DEFENDANT: Fifty-two.

2 THE COURT: Where were you born?

3 THE DEFENDANT: [Unintelligible], Pennsylvania.

4 THE COURT: Are you a citizen of the United
5 States?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Where do you live?

8 THE DEFENDANT: 1816 Merion Lane, Coral Springs,
9 Florida.

10 THE COURT: How far did you go in school?

11 THE DEFENDANT: I went to half a year in college.
12 I was in the Army.

13 THE COURT: All right. You have your -- you have
14 your high school diploma?

15 THE DEFENDANT: Yes, ma'am. Yes, Your Honor.

16 THE COURT: Okay. Do I understand correctly from
17 your answers to my questions so far that you can both speak
18 and understand the English language?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Are you also able to read and write in
21 English without assistance?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Have you had any recent employment?

24 THE DEFENDANT: I'm collecting disability from the
25 VA.

1 THE COURT: Okay. Have you been treated within
2 the last 12 months for mental illness, drug addiction or
3 alcohol addiction?

4 THE DEFENDANT: Right now I'm doing the alcohol
5 outpatient program with the VA, for my regular -- because I
6 suffer from PTSD, so [unintelligible] alcohol
7 [unintelligible].

8 THE COURT: All right. So you're doing outpatient
9 alcohol addiction treatment?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: All right. And then you mentioned
12 that you have a mental -- mental health impairment as well;
13 is that right?

14 THE DEFENDANT: I have -- I just have PTSD, so I
15 speak to -- in the last -- since 2012, I speak to a
16 psychiatrist twice a year.

17 THE COURT: All right. So you see a psychiatrist
18 for your PTSD, and then you're also doing an outpatient
19 program for alcohol addiction?

20 THE DEFENDANT: Yes. I said, my probation officer
21 has all that.

22 THE COURT: Okay. Is there anything about your
23 mental illness or your alcohol addiction that causes you
24 concern about your ability to understand today's proceeding?

25 THE DEFENDANT: No, Your Honor. I understand.

1 THE COURT: All right. In the last 24 hours, have
2 you taken any medication, drugs, alcohol or other substances
3 that might make it difficult for you to understand what's
4 happening here today?

5 THE DEFENDANT: No, Your Honor.

6 THE COURT: Do you know why you're here today?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Do you understand the purpose of
9 today's proceeding?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Can you please tell me in your words
12 what you understand to be the purpose of today's proceeding?

13 THE DEFENDANT: To take accountability of the
14 wrongdoings that I did and doing the [unintelligible], to
15 just accept accountability.

16 THE COURT: All right. Are you currently on
17 probation, parole or supervised release for any federal,
18 state or other conviction?

19 THE DEFENDANT: No, just this one.

20 THE COURT: All right. Mr. Grieco, have you
21 discussed the case with Mr. Augustin?

22 MR. GRIECO: Yes, Judge.

23 THE COURT: And do you believe he understands the
24 nature and purpose of today's proceeding?

25 MR. GRIECO: Yes, Your Honor. I have no

1 reservations.

2 THE COURT: Do you have any concerns about
3 Mr. Augustin's competency to proceed today?

4 THE DEFENDANT: No, Your Honor, not at all.

5 THE COURT: All right. Mr. Morrison, does the
6 United States have any concerns regarding Mr. Augustin's
7 competency to proceed today?

8 MR. MORRISON: None, Your Honor.

9 THE COURT: All right. Mr. Augustin, you've been
10 previously advised of your right to counsel, but I will
11 advise you again here today that you have a right to be
12 represented by counsel at every stage of these proceedings.
13 If you cannot afford an attorney, the court will appoint one
14 to represent you.

15 Do you understand your right to counsel?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: You have retained Mr. Grieco to
18 represent you in the case. Do you understand that
19 Mr. Grieco is your attorney in this case?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Have you had enough time to talk with
22 Mr. Grieco about the charges against you and your response
23 to those charges?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Have you discussed all of the possible

1 defenses to the charges against you?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Have you told Mr. Grieco everything
4 you know about the case?

5 THE DEFENDANT: Yes, I have, Your Honor.

6 THE COURT: Are you completely satisfied with
7 Mr. Grieco's representation and the advice that he has given
8 to you?

9 THE DEFENDANT: Yes, most definitely, yeah.

10 THE COURT: All right. As a reminder, you may
11 stop at any time during today's proceedings to consult with
12 Mr. Grieco.

13 Mr. Grieco, have you had enough time to consult
14 with and prepare Mr. Augustin at each stage of these
15 proceedings?

16 MR. GRIECO: Yes, Your Honor.

17 THE COURT: All right. Mr. Augustin, by pleading
18 guilty, you will be giving up several constitutional rights.
19 Have you reviewed your constitutional rights with your
20 lawyer?

21 THE DEFENDANT: Yes, we -- yes, I have, Your
22 Honor.

23 THE COURT: All right. I do want to briefly
24 review your constitutional rights with you on the record so
25 that I'm satisfied you understand the rights that you will

1 be giving up in these proceedings.

2 The first right I want to talk about is your right
3 to a jury trial. You have a right to plead not guilty and
4 to require the government to proceed to trial. You have a
5 right to a speedy trial, either to a court or to a jury, and
6 the right to assistance of counsel at trial.

7 At trial, you will not have to prove that you are
8 innocent. You will be presumed innocent. And the
9 government would be required to prove your guilt by
10 competent evidence beyond a reasonable doubt as to each
11 element of the offense charged against you.

12 If your trial was before a jury, prospective
13 jurors would be summonsed to the courthouse and you and your
14 lawyer would have an opportunity to participate in the jury
15 selection process.

16 The members of the jury would have to consider
17 each count separately and agree unanimously on the verdict.

18 Sir, do you understand your right to trial?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Do you understand that by pleading
21 guilty, you will be giving up this right?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: You also have a right to compulsory
24 process. That is the right to issue subpoenas to require
25 the attendance of witnesses to testify in your defense.

1 Do you understand your right to compulsory
2 process?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Do you understand that you will be
5 giving up that right if you plead guilty?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: You also have a right to remain silent
8 at trial. Now, let me start first -- let me talk about
9 witnesses.

10 You have a right to confront witnesses. At trial,
11 you would have the right to hear, see and cross-examine all
12 witnesses that the government brings to testify against you.

13 Do you understand your right to confront
14 witnesses?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Do you understand by pleading guilty,
17 you will be giving up that right?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: You have a right to remain silent at
20 trial. Though you would have a right to testify if you
21 chose to do so, you could not be forced or required to
22 testify. If you chose not to testify, no inference or
23 suggestion of guilt could be drawn from the fact that you
24 did not testify.

25 Do you understand your right to remain silent?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Do you understand that you will be
3 giving up that right if you plead guilty?

4 THE DEFENDANT: Yes, Your Honor.

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And do you understand you will be
16 giving up that right if you plead guilty?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Do you understand that you do not have
19 to plead guilty even if you are guilty?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Do you understand that if you plead
22 guilty, you are waiving all of the rights that I have
23 described, and if your plea is accepted, there will be no
24 trial?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: If you plead guilty, I will recommend
2 a finding of guilty be entered, the district judge will
3 consider my recommendation, and if she concurs, she will
4 enter a finding of guilty upon the record and sentence you
5 based on your plea considering -- after considering a
6 presentence investigation.

7 Do you understand that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Do you also understand that by
10 pleading guilty, you will be deprived of valuable civil
11 rights, either for a period of time or permanently,
12 including the right to vote, the right to hold public office
13 and the right to serve on a jury?

14 Do you understand that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Do you understand that by pleading
17 guilty to a felony in federal court, you will never again be
18 able to legally possess a firearm?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: If you proceed with your guilty plea
21 and the district judge accepts your plea, there will be very
22 limited circumstances under which that plea could be
23 withdrawn. Legally, the court must be given fair and just
24 reasons for allowing a plea to be withdrawn. Being
25 disappointed with the sentence imposed is not a fair and

1 just reason for withdrawal.

2 Do you understand that?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: All right. I also have here a waiver
5 of indictment form with a signature above the defendant's
6 signature.

7 Did you sign that waiver of indictment form?

8 THE DEFENDANT: Yes, I did, Your Honor.

9 THE COURT: All right. Did you discuss with your
10 attorney what it would mean to waive the indictment?

11 THE DEFENDANT: Yes. Yes, Your Honor.

12 THE COURT: Do you understand you have a right to
13 have the charges made against you presented to a grand jury
14 and for the grand jury to decide whether probable cause
15 exists to return an indictment against you?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Do you also understand that by signing
18 that waiver, you will be giving up your right to have the
19 charges presented to the grand jury and to have the grand
20 jury decide whether to return an indictment?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: All right. Do all counsel have a copy
23 of the information?

24 MR. MORRISON: Yes, Your Honor.

25 MR. GRIECO: Yes, Your Honor. Sorry. I'm --

1 THE COURT: Okay.

2 MR. GRIECO: My camera went off.

3 THE COURT: All right. Mr. Augustin, do you also
4 have a copy of the information?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: All right. I want to review the
7 charge in the information with you, Mr. Augustin. That is
8 the charge that I understand you wish to plead guilty to.
9 That is Count 1 of the information. And I believe,
10 Mr. Augustin, you can turn to page 4 of the information and
11 that's where the discussion of Count 1 begins.

12 Count 1 charges you with violating 18 U.S.C. 1349,
13 which pertains to conspiracy to commit wire fraud.

14 Mr. Augustin, have you discussed Count 1 with your
15 attorney?

16 THE DEFENDANT: Yes, I have, Your Honor.

17 THE COURT: And do you understand the charge made
18 against you in Count 1?

19 THE DEFENDANT: Yes. Yes, I have.

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Okay. I just wanted you to have that
3 up for your reference, because I'm now going to ask
4 Mr. Morrison to state the essential elements of the offense
5 that would have to be proven if the matter went to trial.

8 MR. MORRISON: Yes, Your Honor. The offense of
9 conspiracy to commit wire fraud has two elements.

10 First, that two or more persons conspired or
11 agreed to violate federal drug -- federal laws concerning
12 wire fraud, being 18 U.S.C. Section 1343; and

15 And for reference, the object of conspiracy, wire
16 fraud, has four elements that define that offense.

25 Fourth, that in advancing or furthering or

1 carrying out the scheme to defraud in order to obtain money
2 or property, the defendant transmitted or caused the
3 transmission of any writing, signal or sound by means of a
4 wire, radio, or television communication in interstate
5 commerce.

6 THE COURT: All right. Mr. Grieco, did
7 Mr. Morrison adequately describe the essential elements of
8 the offense in this case?

9 MR. GRIECO: Yes, Your Honor.

10 THE COURT: All right. Mr. Augustin, do you
11 understand each of the offense -- excuse me, each of the
12 elements described by Mr. Morrison?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Do you have any questions regarding
15 any of those elements?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: All right. Mr. Grieco, have you gone
18 over each of the elements of the offense with Mr. Augustin?

19 MR. GRIECO: Yes, Your Honor.

20 THE COURT: And do you believe that Mr. Augustin
21 understands those elements?

22 MR. GRIECO: Yes, Your Honor.

23 THE COURT: Now, Mr. Augustin, I'm going to next
24 ask Mr. Morrison to recite the penalties associated with the
25 charge to which you intend to plead guilty, but before he

1 does that, sir, I'd like you to turn to page 3 of the plea
2 agreement. At the top of that page and in the paragraph
3 below, the plea agreement discusses some of these -- some of
4 the potential penalties that would be involved, and I wanted
5 you to have that there in front of you for reference.

6 I'm now going to ask Mr. Morrison to please state
7 any max- -- mandatory minimum penalty, any maximum possible
8 penalty, including imprisonment, fine, term of supervised
9 release, and any applicable forfeiture or other provision.

10 Mr. Morrison, would you state those, please?

11 MR. MORRISON: Yes, Your Honor. The offense of
12 conspiracy to commit wire fraud is subject to up to 20 years
13 in prison, up to a fine of either \$250,000 or an alternative
14 amount of twice the pecuniary gain or gross pecuniary loss,
15 up to three years' supervised release and a mandatory
16 special assessment of \$100.

17 The defendant is also agreeing to forfeiture in
18 the plea agreement, and this offense is subject to
19 forfeiture.

20 I do want to note for the record and apologize to
21 the court and to the defense that I made a typo in paragraph
22 5 of the plea agreement. The information correctly sets
23 forth the account, the last four account numbers there, the
24 last four numbers of the account in an effort to
25 [unintelligible] that account, and in this document,

1 however, I repeated the 2627. That is correctly identified
2 in the information, specifically in -- on page 9 of the
3 information, that's page ID 213, ending in 2551.

4 So, and I don't think there's any dispute or
5 confusion about this on the defendant's part. He did
6 separately execute the referenced turnover agreements on
7 which the full account number is used and which for security
8 reasons I won't put on the record. But also that document
9 ends in the last four numbers 2551.

10 I don't believe we need to make any other record
11 other than just to acknowledge orally on the record here
12 that there is a typo in the plea agreement, and that the
13 defendant is agreeing to forfeit the account as charged in
14 the information and as agreed in the term of the plea
15 agreement.

16 So the defendant is agreeing to forfeit all
17 contents of two accounts. First, an account holding
18 approximately \$271,588.28, for a Fifth Third Bank account
19 ending in 2627. And next, the account holding approximately
20 \$8,681.07 in a Fifth Third account number ending, not in
21 that same number, but ending in the 2551 as I referenced.

22 And those property are forfeitable under 18 U.S.C.
23 Section 981 and 28 U.S.C. Section 2461.

24 I also reference he has already done what's
25 required as stated in paragraph 7 regarding exceeding the

1 term of the agreement.

2 The defendant could also be subject to cost and
3 will be subject to a restitution order as imposed by the
4 court. And that's referenced in paragraph 10 here, but
5 additional details are found at the end of the plea
6 agreement, or closer to the end of the plea agreement, I
7 should say. Specifically, on page 16, beginning at
8 paragraph 57 through page 17, ending in paragraph 59.

9 THE COURT: Okay. Thank you very much.

10 So, Mr. Augustin, when we're talking here about
11 the potential penalties, we're talking about -- the
12 information that Mr. Morrison just discussed, we're talking
13 about paragraphs 3 through 10 of the plea agreement. Do you
14 see those paragraphs in front of you today?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And did you review those paragraphs
17 with your attorney?

18 THE DEFENDANT: Yes, Your Honor. Yes, I did.

19 THE COURT: And when you initialed the page
20 corners, were you agreeing to the terms of -- that were set
21 forth there?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: All right. And do you understand that
24 Mr. Morrison has said there needs to be just a technical
25 correction to the account number for this to be accurate?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: And do you agree with him that there
3 are two accounts with two different numbers that would be
4 subject to forfeiture in this case?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: All right. And then I'd like you to
7 turn also to page 16 of the plea agreement. And on page 16,
8 there's a section begins "Restitution" and there's
9 paragraphs 57 on that page and then 58 and 59 on page 17.

10 Do you see those paragraphs relating to
11 restitution?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And did you review those paragraphs
14 with your attorney and signify that you agreed to those
15 paragraphs when you initialed those two pages of the plea
16 agreement?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Okay. Mr. Grieco, has Mr. Morrison
19 accurately described the applicable penalties in this case?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: All right. Mr. Augustin, do you
22 understand the possible penalties for the charge against
23 you?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: All right. Do you also understand

1 that restitution may be ordered as a condition of your
2 probation?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Do you understand that depending on
5 your financial status, the court can order you to pay costs
6 of confinement or supervised release?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Do you understand that as a result of
9 your guilty plea, a special assessment of \$100 per count
10 must be imposed by the court?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Do you understand that as a result of
13 your plea, you will be required to forfeit property to the
14 government?

15 THE DEFENDANT: Yes, Your Honor. You're talking
16 about the accounts, right?

17 THE COURT: Right, forfeit property to the
18 government, and specifically, it's those two accounts that
19 are referenced in the plea agreement. And I --

20 Mr. Morrison, is there a possibility of other
21 forfeitures being sought under the plea agreement, or is it
22 just those two accounts?

23 MR. MORRISON: It's just those two accounts. It's
24 charged as, you know, all property that's proceeds of,
25 et cetera, and those are the two accounts that we are

1 forfeiting under the plea agreement and nothing else.

2 THE COURT: All right. So, Mr. Augustin, do you
3 understand that you will be subject to forfeiture of those
4 two accounts as provided in the plea agreement?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Do you understand that following any
7 prison term, you would be subject to a period of supervised
8 release?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Do you understand if the district
11 judge finds you have violated a condition of your supervised
12 release, she may send you back to prison regardless of how
13 much time in that supervised release you have served before
14 you violated the condition?

15 THE DEFENDANT: Yes, I have.

16 THE COURT: Do you understand if the court sends
17 you back to prison for less than two years, it may then
18 enter an order -- impose a further term of supervised
19 release following your imprisonment?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: We have discussed already a little bit
22 the plea agreement. Mr. Augustin, you have reached a plea
23 agreement with the government; is that right?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: And, sir, do you have a copy of that

1 plea agreement?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: All right. Do the attorneys both have
4 copies of the plea agreement?

5 MR. MORRISON: Yes, Your Honor.

6 MR. GRIECO: Yes, Your Honor.

7 THE COURT: All right. Mr. Augustin, I'd like you
8 to turn, please, to page 21 of the plea agreement. It's the
9 signature page.

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Okay. At the top of that page, there
12 is a line that says "Phillip Augustin," and it has the date
13 November 9th, 2021 and a signature. Is that your signature,
14 sir?

15 THE DEFENDANT: Yes, it is, Your Honor.

16 THE COURT: All right. And all of the pages
17 prior, pages 1 through -- 1 through 20 of the plea
18 agreement, in the lower right-hand corner there are the
19 initials handwritten PA.

20 Did you handwrite those initials on every page of
21 the plea agreement?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: When you added your initials to those
24 pages, was that to signify that you had reviewed all of the
25 contents of that page and discussed it with your attorney?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: And when you initialed those pages and
3 signed the plea agreement, was that signifying that you
4 agreed to all of the terms of the plea agreement?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: All right. Have you had the
7 opportunity to read every part of the plea agreement and
8 discuss its meaning with your attorney?

9 THE DEFENDANT: Yes, I did, Your Honor, a few
10 times.

11 THE COURT: Did you -- do you understand the terms
12 of the plea agreement?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: All right. Mr. Morrison, keeping in
15 mind that Mr. Augustin has reviewed in depth and agreed to
16 the specific terms of the plea agreement, would you please
17 briefly set forth the substance of the plea agreement?

18 MR. MORRISON: Yes, Your Honor.

19 In this plea agreement, the defendant is agreeing
20 to plead guilty to the information in this case, and the
21 government is agreeing not to bring any other charges
22 against the defendant for violations known to our offices on
23 the date of the execution of the agreement as it relates to
24 the investigation.

25 The defendant is also agreeing to the forfeiture

1 as you just discussed as charged in the information against
2 him.

3 We have agreed to certain sentencing stipulations,
4 specifically to certain stipulated offense level
5 calculations. Those total up to an offense level before
6 acceptance of responsibility of 35 under Section 2B1.1 of
7 the guidelines and 2C1.1. And those are only stipulated
8 recommendations to the district court, which will
9 independently determine the correct offense level.

10 The government agrees as of now, the defendant
11 qualifies for the three-level reduction for acceptance of
12 responsibility and has no reason to believe that it will not
13 move for that reduction at the time of sentencing.

14 And the parties have no agreement regarding
15 criminal history.

16 There is the defendant's agreement to waive any
17 right to appeal the conviction or sentence in this matter or
18 to otherwise attack it by a post-conviction motion save for
19 those specifically reserved in paragraph 23 of the plea
20 agreement, and specifically as it concerns his right to
21 appeal any sentence that exceeds the maximum of the
22 sentencing imprisonment range determined under the
23 guidelines using the stipulations and computations in this
24 plea agreement and the criminal history category as
25 determined by the court.

1 There is a lengthy factual basis that will be
2 stipulated to, which is only some of the facts that the
3 defendant agrees are true in this matter.

4 The defendant also agrees to pay restitution, as
5 we covered.

6 The defendant acknowledges the venue likely exists
7 here, but to the extent there's any dispute, he agrees to
8 waive any challenge he might have to venue.

9 And I think that would suffice as a summary of the
10 plea agreement's most important terms.

11 THE COURT: All right. Thank you.

12 Mr. Grieco, do you -- do you agree that
13 Mr. Morrison has accurately described the general substance
14 of the plea agreement?

15 MR. GRIECO: Yes, Your Honor.

16 THE COURT: All right. Mr. Augustin, has anyone,
17 and this would include your attorney, attorney for the
18 government or the court, has anyone made any promise to you
19 other than what is made in the plea agreement that persuaded
20 or helped persuade you to plead guilty in this case?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: All right. I'd like you,
23 Mr. Augustin, please to turn to page 7 of the plea
24 agreement, particularly to paragraph 23, which is labeled
25 "Waiver of Appeal and Post-Conviction Attack."

1 Do you see that paragraph?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Did you review and discuss that
4 paragraph with your attorney before agreeing to those terms?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: All right. As Mr. Morrison has
7 discussed, that paragraph limits your ability to appeal
8 any -- to appeal the guilty plea in this case.

9 Do you understand that if I recommend acceptance
10 of this agreement and the district judge accepts my
11 recommendation, that you cannot appeal your sentence except
12 as permitted under paragraph 23?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Do you also understand if I recommend
15 acceptance of this agreement and the district judge accepts
16 my recommendation, you cannot contest your sentence by any
17 post-conviction proceedings except as permitted by paragraph
18 23?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Do you further understand that under
21 some circumstances, the government may have the right to
22 appeal any sentence imposed?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: All right. Mr. Augustin, have you and
25 your lawyer talked about how the sentencing guidelines might

1 apply in your case?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: All right. I'd like you to turn
4 please, sir, to page 5 of the plea agreement. And there is
5 a section there titled "Sentencing Stipulations and
6 Agreements" above paragraph 16.

7 Do you see that page?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: All right. And then if you follow
10 that through to pages 6 and 7, paragraphs 16 through 22,
11 those are the paragraphs that are in the category
12 "Sentencing Stipulations and Agreements."

13 Did you discuss each of those paragraphs with your
14 lawyer?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: All right. And by agreeing to the
17 plea agreement, did you agree to the terms in those
18 paragraphs?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Okay. Do you understand that those
21 paragraphs address the application of the sentencing
22 guidelines in your case?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Do you understand that there is no
25 agreement between you and the government as to what criminal

1 history category applies in your case, and that the district
2 court will determine what criminal history category will
3 apply after receiving a presentence report?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Do you understand that federal
6 sentencing law requires the court to impose a sentence that
7 is reasonable and that the court must consider the advisory
8 United States Sentencing Guidelines in determining what is a
9 reasonable sentence?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Do you understand that sentencing
12 rests within the discretion of the court?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Do you understand the court will
15 determine the advisory United States Sentencing Guidelines
16 imprisonment range that applies in your case after a
17 presentence report has been prepared by the U.S. Probation
18 Office and reviewed by the parties?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Do you understand that the court must
21 consider the sentencing factors under 18 U.S.C. 3553(a) in
22 determining your sentence?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Do you understand that any
25 recommendations contained in the plea agreement are not

1 binding on the court, and the court may impose any sentence
2 provided by law?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Do you understand that under federal
5 sentencing law, after the court determines what guideline
6 range applies in a case, the judge has the authority to
7 sentence you to a longer or shorter period than what is
8 recommended in the guidelines?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Do you understand that the court alone
11 will decide the applicable sentencing range, including
12 whether there is any basis to depart from that range or
13 impose a sentence outside of the guidelines, and will
14 determine what sentence to impose?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Do you understand the sentence the
17 court imposes may be different from any estimate that your
18 attorney has given you?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Do you also understand that if the
21 sentence is more severe than you expected, you will still be
22 bound by your plea and will not have the ability to withdraw
23 it?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Do you also understand that parole has

1 been abolished, and if you are sentenced to prison, you will
2 not be released on parole?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: All right. Have you -- having
5 discussed these rights with you, do you still wish to
6 proceed with your guilty plea?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: All right. Mr. Augustin, I'm now
9 going to ask the U.S. Attorney to review the portion of the
10 plea agreement where you stipulate to the facts as they
11 relate to your conduct as charged in the information.

12 I'm going to ask him to briefly summarize the
13 facts that the government believes could be proven by beyond
14 a reasonable doubt if the matter went to trial.

15 And after he does so, I am going to ask you if
16 there are any facts in the plea agreement that you disagree
17 with, and I will give you the opportunity to correct any
18 facts you believe may be incorrect.

19 THE DEFENDANT: Okay.

20 THE COURT: Before we do that, Mr. Augustin, I
21 would like to direct your attention to page 8 of the plea
22 agreement. Beginning on page 8 and continuing through page
23 16 of the plea agreement, paragraphs 25 through 56 of the
24 plea agreement discuss the factual basis as stipulated in
25 the plea agreement.

1 Would you please briefly, Mr. Augustin, look at
2 those paragraphs 25 to 56 to confirm that you recall looking
3 at them when you signed the agreement?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: All right. And when you initialed
6 those pages, was that to stipulate that you agreed to the
7 facts that were stated in the plea agreement?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: All right. Mr. Morrison,
10 understanding that the facts are set forth specifically
11 within the plea agreement, would you please briefly and
12 generally summarize the fact admissions that are set forth
13 in the plea agreement?

14 MR. MORRISON: Yes, Your Honor.

15 The defendant and the government stipulate that
16 from approximately March 2020 and through July of 2020, he
17 did conspire with a number of individuals, including his
18 codefendant, James Richard Stote, to commit fraud by
19 interstate and wire communications, specifically, wire
20 communications with confederate followers and with each
21 other about submitting fraudulent Paycheck Protection
22 Program, PPP, loan applications.

23 As part of this scheme, the defendant and
24 Mr. Stote devised a scheme to submit these falsified
25 applications with falsified tax forms and other documents,

1 such as bank statements. And Mr. Augustin's primary role on
2 this scheme was in recruiting additional confederate
3 followers. And the arrangement was for them to agree to
4 receive these fraudulent loans of hundreds of thousands of
5 dollars in exchange for paying Mr. Stote and Mr. Augustin a
6 fee, or a percentage of the amount of the loan.

7 And in furtherance of that scheme, they sent a
8 number of interstate wire communications, including to
9 confederate followers, including a confederate follower in
10 the Northern District of Ohio, Eastern Division. And they
11 communicated with each other as well through interstate
12 communications, and submitted these fraudulent loan
13 applications through interstate wire communications.

14 And that as a result of defendant's conduct, and
15 the conduct of the coconspirators, that was reasonably
16 foreseeable to him application materials for at least 34 PPP
17 loans worth at least 15 million, approximately, dollars were
18 submitted with additional applications planned to be
19 submitted.

20 THE COURT: All right. Thank you.

21 Mr. Grieco, do you agree that Mr. Morrison has
22 accurately given a general summary of the facts addressed in
23 the plea agreement?

24 MR. GRIECO: Yes, Your Honor.

25 THE COURT: All right. Mr. Augustin, after

1 reviewing the paragraph that you agreed to in the plea
2 agreement and hearing Mr. Morrison's general description, do
3 you agree with all of the facts as stated in the plea
4 agreement in those paragraphs that I just pointed out to
5 you?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: All right. Do you admit that the
8 facts that are stated in the plea agreement are true?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Mr. Morrison, at this point, is there
11 any right or are there any procedural provisions that I have
12 failed to account for prior to receiving Mr. Augustin's
13 plea?

14 MR. MORRISON: No, Your Honor. Thank you very
15 much for a fair hearing.

16 THE COURT: All right. Mr. Grieco, from the
17 defense perspective, is there any right or are there any
18 procedural provisions that I have failed to account for
19 prior to receiving Mr. Augustin's plea?

20 MR. GRIECO: No, Your Honor. We're prepared to
21 proceed.

22 THE COURT: All right. Very good.

23 Mr. Augustin, I'm now prepared to receive your
24 plea. Do you want to confer with your attorney before we
25 proceed?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: All right. Do you have any questions
3 for me before I ask you what your plea is?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: Now that I have advised you of your
6 rights and have received evidence as to your competence and
7 as to the factual basis for your plea, Mr. Augustin, how do
8 you plead to Count 1 of the information, guilty or not
9 guilty?

10 THE DEFENDANT: I plead guilty.

14 THE DEFENDANT: Yes, and I just want to take
15 accountability for my wrongdoing.

16 THE COURT: Mr. Augustin, I've considered your
17 testimony and your acknowledgement that you are guilty as
18 charged in Count 1 of the information, that there is an
19 adequate factual basis for your plea, that you have had the
20 assistance of an able lawyer, that you know your
21 constitutional right to a trial and knowing you waived those
22 rights, and that you know the maximum possible punishment
23 and the advisory sentencing guidelines recommendations, I
24 hereby make the following findings:

25 I find that Mr. Augustin is fully competent to and

1 capable of entering an informed plea.

2 That he is aware of the nature of the charges
3 brought against him and the consequences of his plea.

4 That there is a factual basis for his plea.

5 That his plea of guilty to the offense charged in
6 Count 1 of the information is a knowing and voluntary plea
7 supported by an independent basis in fact containing each of
8 the essential elements of the offense charged.

9 I therefore will recommend to District Judge
10 Barker that she approve the plea agreement, that she accept
11 Mr. Augustin's plea, and that she adjudge him guilty of the
12 offense charged in Count 1 of the information.

13 Mr. Augustin, to expedite the completion of the
14 case, the matter will be immediately referred to the United
15 States Probation Office for the preparation of a presentence
16 report.

17 Mr. Augustin, it is in your best interest to
18 cooperate with the probation officer fully and completely in
19 furnishing information for that report since that report
20 will be important in the decision as to what your sentence
21 will be.

22 The presentence report will inform the district
23 judge application of the 3553(a) factors and her obligation
24 to impose a sentence that is sufficient, but not greater
25 than necessary.

1 You and your counsel will have the right and the
2 opportunity to examine that presentence report and to
3 comment on it at the time of sentencing.

4 You will have the right to be reasonably heard
5 before your sentencing, and therefore, will be permitted to
6 speak at your sentencing if you desire to do so.

7 A question for the clerk. Do we have a
8 disposition sentencing date currently?

9 THE CLERK: No, Your Honor, we do not.

10 THE COURT: All right. The disposition sentencing
11 will be set by Judge Barker.

12 The defendant will remain on bond subject to the
13 conditions that were previously set.

14 Mr. Augustin, let me remind you that a failure to
15 appear at your sentencing hearing is a separate criminal
16 offense for which the penalties are severe. Also, if you
17 commit a crime while you are on release, you may be subject
18 to more severe penalties than those imposed on other people
19 who commit the same crime.

20 Further, if any condition of release that was
21 previously set, those will all remain in full force and
22 effect. And if you violate any of those conditions, that
23 could also subject you to severe penalties.

24 Do you understand all that I've told you?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: All right. Mr. Morrison, is there
2 anything further on behalf of the United States?

3 MR. MORRISON: No. Thank you very much, Your
4 Honor.

5 THE COURT: All right. Mr. Grieco, anything
6 further on behalf of the defense?

7 MR. GRIECO: No, Your Honor. Thank you.

10 THE DEFENDANT: Yes, Your Honor.

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: All right. Thank you all. We're
15 adjourned.

16 (Thereupon, proceedings concluded at 12:38 p.m.)

17 - - -

18 | Page

20 I certify that the foregoing is a correct transcript,
21 to the best of my ability, transcribed from a digital audio
recording from the record of proceedings in the
above-entitled matter.